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SUBJECT: UN REFORM: US BLOCKS WIPO BUDGET OVER ACCOUNTABILITY

REF: State 133443

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SUMMARY  
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1. (U) At the WIPO 43rd General Assemblies, the US succeeded in its goal of forcing discussion of a confidential internal audit report alleging misconduct on the part the Sudanese Director General Kamil Idris. However, on the last day of the 10-day meeting, the African countries rejected a proposed process to deal with the allegations. The US and its allies then brought proceedings to a halt, declaring no further business could be conducted until the questions surrounding Idris were resolved. In two dramatic and rare votes (the first since 1997) taken as midnight approached, the US and like-minded countries blocked a motion to close debate on proposals to lower fees in the Patent Cooperation Treaty (PCT) Assembly, and then blocked adoption of new operating budgets (both a revised 2006/07 budget and a new 2008/09 budget proposing increased spending for the so-called development agenda) in the General Assembly (GA). Under the terms of the WIPO Convention, operations will continue to be funded at the level of the last approved budget. WIPO, however, will be able to meet increased demand for its patent, trademark and industrial design registration services under so-called "flexibility clauses" approved earlier that permit additional expenditure on

these systems in accordance with increased filings.

¶2. (SBU) These actions were widely seen as a strong rebuke to the Director General and his supporters. The US and its allies will now continue to press for convocation of extraordinary meetings of the WIPO bodies with authority to discipline the Director General. Nevertheless, Kamil Idris, with strong support from Egypt, Algeria, and other African and Islamic countries, continues to resist calls for his resignation. His removal will require a concerted, sustained effort and close cooperation with like-minded countries. In devising our strategy, we need to be mindful that we are in the minority with the power to block (if like-minded countries support us) but not/not to carry motions should voting be required. This is nonetheless a strong position as tactically two-thirds of eligible voting states are required to carry over the minority's objections and tactically the US and our allies should retain the ability to shape the debate. End summary.

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INTRODUCTION  
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¶3. (U) The World Intellectual Property Organization (WIPO) convened its 43rd General Assemblies from September 24th to October 3rd, ¶2007. The agenda included 30 items of business, but two were of particular interest to member states: Agenda Item 12, added at US request, concerning an internal audit report alleging misconduct on the part of the Director General, and Agenda Item 18, adoption of proposals for a "development agenda" at WIPO, the product of three years of contentious negotiations. This message reports on the debate over Item 12; septel will report details on other agenda items.

¶4. (U) The US delegation was headed by US Permanent Representative to the UN in Geneva, Ambassador Warren Tichenor, and US Department of Commerce Under Secretary for Intellectual Property and Director of the US Patent and Trademark Office (USPTO) Jon Dudas, and included representatives from Mission Geneva, the Department of State, USPTO and the U.S. Copyright Office.

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UNDERSTANDING THE BATTLE LINES  
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¶5. (SBU) THE DEVELOPMENT AGENDA: WIPO has 184 members, most of whom rarely, if ever, file patents. The patent and trademark registration systems provide about 90 percent of the revenues but absorb only about 40 percent of the expenditures. With a majority of members who have little-to-no stake in the international intellectual property rights protection system, the major users (US, Japan, EU, Korea) have gradually been losing control of the organization to those who believe it can be used to finance an anti-IP agenda. In its opening statement during this meeting, for example, Brazil openly declared its intention to transform WIPO into a "political" organization that concentrated more of its resources on economic research and more studies on the "impact" of IP on development. Proponents of the "development agenda" cared little about accountability so long as the Director General supported their efforts.

¶6. (SBU) SCARE TACTICS: For his part, Idris cynically but effectively used the "development agenda" to curry favor and win supporters to defend against mounting allegations of corruption at WIPO. (Comment: In addition to the internal audit report, reports by a variety of independent bodies, including the UN Joint Inspection Unit and the Volker Commission investigating the Oil-for-Food scandal, reported irregularities, lack of internal oversight, and potential bribery in addition to mismanagement. End comment.) Idris ultimately convinced many developed countries that any action against him would be seen as an attempt to block the development agenda. The US has thus been pursuing its quest for good governance with little support from even like-minded countries. Most were especially reluctant to pursue a confrontation during these General Assemblies since the hard-fought "development agenda" was up for adoption. Idris may be corrupt and unscrupulous but he is politically savvy, and had concluded that given his support among the "majority" of members, he needn't heed US demands to answer to member states regarding his conduct.

¶7. (U) WIPO REGIONAL POLITICS: Like most UN organizations, WIPO's business is conducted by member states organized into seven regional

or like-minded groups. The US belongs to "Group B," a group of 32 industrialized countries that includes the much of the EU, Japan, Switzerland, Canada, Norway, New Zealand, the Holy See, Israel and Turkey, chaired by Italy, with US as Vice Chair playing an active role. (Note: the US took over as coordinator at the end of the meeting. End note.) Other EU members belong to the 16-country Central European and Baltic States group, led by Poland. The Africa Group, led by Algeria, has 53 members. The Asia/Pacific Group, which includes non-African Arab and many Islamic countries, has 37 members. GRULAC includes 33 Latin American and Caribbean countries, chaired by Brazil, sponsor of the "development agenda." The Russian Federation coordinates the 12-members of the Central Asian and Eastern European Group, and finally, China is its own group. As in other UN bodies, there is active competition among groups for key positions. In the run up to the assemblies, regional coordinators negotiated a three-way deal to give Africa the Chairmanship of the General Assembly (in the person of the Nigerian Permrep, Ambassador Martin Uhomoibhi), Group B the chair of the Coordination Committee (filled by Norway) and GRULAC the chair of the Program and Budget Committee (filled by Brazil).

¶18. (SBU) EXPANDING THE NORTH-SOUTH DIVIDE: The introduction of proposals for a "development agenda" greatly politicized debates in what used to be a calm, technically-minded organization. Many developed countries were opposed to some of the more radical proposals, seen as an attempt to turn WIPO into UNCTAD. Developing countries, eager for increased technical assistance, strongly supported the "development agenda" and saw developed country resistance as evidence of their lack of support for developing countries in general. As noted above, as accusations of improprieties mounted against him, the Director General intentionally sought to further polarize this debate to gain advantage.

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AGENDA ITEM 12  
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¶19. (U) DEMANDING ACCOUNTABILITY: Supporters of embattled WIPO Director General Kamil Idris sought to suppress discussion of the confidential internal audit report which concluded that Idris had

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used false birth dates for his personal gain, even though the report had been leaked to the press and posted on the internet several months earlier. (Note: it is available at <http://www.foxnews.com/projects/pdf/Idris.pdf> .) The United States, initially a lone voice demanding that the report be added to the meeting's agenda, led efforts to put into place a process to hold the Director General accountable.

¶10. (U) AMONG FRIENDS?: It took two days of negotiations to find an acceptable formulation to allow "Item 12" to remain on the agenda, after the Africans initially tried to block adoption of an agenda that included it. It was agreed that the matter would initially be discussed by a group of "Friends of the Chair" who would report recommendations on how to deal with the report to the Chair. Member states would be given the opportunity to comment after the Chair's report to the plenary. The "Friends of the Chair" included representatives of each regional group in WIPO, WIPO Legal Counsel Edward Kwakwa, and the Costa Rican GA Vice Chair. After a week of protracted but fruitless informal negotiations among the so-called "Friends," the GA Chair informed the plenary that the group was unable to agree, though a majority had favored referral of the matter to WIPO's independent Audit Committee. (Note: the US did not oppose this but did not see it as sufficient, since this committee has no authority over the Director General. End note.)

¶11. (U) ANSWER OR QUIT: In the US statement on the subject, Ambassador Tichenor described the audit report's conclusions in detail, and challenged the Director General to clearly and convincingly answer the allegations in open forum before member states, or resign. During the extraordinary discussion that followed the US statement, 63 member states intervened, raising questions and reciting the report's conclusions for the record. At least half the interventions supported US calls that Idris explain himself or resign. WIPO had never witnessed such a discussion.

¶12. (SBU) Over US objections, the Chair gaveled the discussion of the agenda item closed on the last day of assembly, noting that it

would be left up to member states to decide the way forward.  
(Comment: Challenging the Chair's ruling would have required mustering a two-thirds majority, which we did not have. The US delegation judged that such a move would have been counterproductive, since it would have antagonized the Chair, who had been fair despite intense pressure from the African and Islamic countries to conclude discussions on the matter much earlier during the meeting. End comment.)

¶13. (U) BRINKSMANSHIP OVER VOTING: With the exception of the election of the current Director General in 1997, WIPO has always taken decisions by consensus. Part of the African Group's strategy had been a threat to call for a vote, always claiming that it had the support of the majority of WIPO members. Nevertheless, Group B declared that it would not agree to discuss remaining agenda items until the questions concerning the Director General were resolved, despite the closure of debate on Agenda Item 12. The Africans renewed the vote threat as discussions on US, Japanese and Brazilian proposals to reduce patent registration fees dragged on inconclusively. "We don't think it would be advantageous for either side to go to a vote," the Algerian warned. "We all know about the US arrears." (Comment: While the US was in arrears, it had not yet lost the right to vote, to the disgruntlement of the Algerian. End comment.)

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CROSSING THE RUBICON: VOTING  
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¶14. (U) As the Assembly's scheduled closing hour of 6pm came and went, the Algerian Ambassador introduced a motion to close the debate. The United States and Switzerland announced that they would block the motion, whereupon the Algerian called for a vote, sending the room into an uproar. When calm was restored, the Swiss asked for clarification of voting eligibility, and the US asked for voting by roll call. The WIPO Legal Counsel clarified that members whose contributions were two or more years in arrears would not be permitted to vote. The roll call would be only of those members eligible. With that, for the first time in WIPO's history, members voted on a motion to close debate on the subject of PCT fees. With only 40 voting in favor of the motion, it failed (a two-thirds majority was required). 42 countries voted against the motion, and 19 abstained. 15 of the 137 members of the PCT Assembly, a smaller body than the WIPO General Assembly, were ineligible to vote. The PCT Assembly then adjourned, intending to reconvene, but was pre-empted by the General Assembly. Septel will discuss the implications of the failure to formally close that Assembly.

¶15. (U) JUST SAY NO: During the break that followed, the Swiss, Portuguese, Spanish and US Ambassadors put forward a last-minute proposal for a process to deal with the allegations against the Director General, hoping that losing a vote would have softened the Africans. However, they decided to reject the proposal when it appeared that GRULAC, the Russians, and the Chinese would support moving forward to consider and pass the organization's proposed budget. The Chair reconvened the General Assembly at nearly 10 pm, and after an hour of procedural objections by Group B, allowed the secretariat to make its presentation. Numerous developing countries

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spoke in favor of approving the budget to finance and implement the "development agenda." Switzerland, Spain, the EU, Canada, and Australia raised concerns about proceeding without a resolution of the questions surrounding the Idris and in view of the lack of resolution over the issue of PCT fees. The US announced it would block adoption of the budget, whereupon the Algerian called for adoption of the budget by acclamation in view of the US desire to withhold consensus. Ambassador Tichenor repeated clearly that the US was opposed to adoption of the budget but was not "withholding" consensus. Rather, the US intended to "block" adoption of the budget. The Algerian then called for a vote by a show of hands, and the US countered with a request for vote by roll call, seconded by Spain.

¶16. (U) GROUP B UNITY HOLDS: Legal Counsel Edward Kwakwa made clear the vote would concern both the revised 2006/07 budget and the Director General's new 2008/09 program and budget proposing increased spending for the "development agenda." The roll call



began shortly before midnight, with 64 countries voting to adopt the budget, 44 countries voting against the motion, 2 abstentions, 47 absent and 27 ineligible. (A matrix tabulating the results is being forwarded to Washington separately by email. Others wishing a copy should email Lisa Carle at US Mission Geneva.) The Legal Counsel announced the results to a hushed room of stunned delegates. For a second time, a motion proposed by the Africa group had failed to muster the required majority. There would be no new budget, and no new financing for the "development agenda." Under the terms of the WIPO Convention, operations will continue to be funded at the level of the last approved budget, i.e., the original 2006/07 biennial budget. The Chair announced that since the time allotted to the 43rd General Assemblies had elapsed (it was by then nearly 1 am), the meeting was over.

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COMMENT  
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¶17. (SBU) WHAT WE ACHIEVED: The meeting outcome represents an important turning point at WIPO. The US overcame significant entrenched interests to put this issue front and center and demand action and a process for dealing with misconduct by the head of the agency. At the start of the General Assembly, the US was the only country to object to an African proposal to block adoption of an Agenda that included consideration of the internal auditor's report. By the end of the meeting, the US was supported by a coalition that included Japan, the EU (overcoming French and Italian opposition to blocking the budget fear of alienating the Africans,) the Central European and Baltic States, and, significantly, Korea, which broke ranks for the first time with the Asian Group. It was a first at WIPO.

¶18. (SBU) We are in a stronger position now than we would have been had the Africans agreed to a process. If countries want to get a budget to implement the "development agenda," they'll have to agree to action on Idris. And in the interim, Idris will be constrained by reduced funding levels which will limit his ability to distribute largess to his supporters, or deliver on many promises to employ cronies' relatives or fly them on lavish "missions" for "technical assistance." Pressure for him to step down will increase the longer the situation drags on.

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RECOMMENDED NEXT STEPS: A SUSTAINED CAMPAIGN  
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¶19. (SBU) Idris continues to resist all calls for resignation, however, reportedly relying on the counsel of the Egyptian Permanent Representative, Ambassador Sameh Shoukri, among others. (Note: Shoukri's son is employed at WIPO. End note.) Removing Idris will require a three-pronged strategy: 1) continuing to pursue due process 2) public diplomacy and lobbying key stakeholders to make clear to Idris that he has no choice but to resign, and 3) working with like-minded countries behind the scenes to turn up the pressure, and consider whether to ask a third country such as Saudi Arabia to intercede.

¶20. (SBU) Mission Geneva is coordinating with Group B countries to request an extraordinary session of Coordination Committee to be eventually followed by the General Assembly (on the time-table earlier suggested, i.e., Coordination Committee by December, the General Assembly by February 2008 - we're somewhat constrained by rules which specify time-limits for calling meetings). A smaller group consisting of delegates from the US, France, Belgium, Spain, Turkey, UK, Switzerland and the Netherlands has formed to begin outreach to all Coordination Committee members to build support to bring about the Director General's resignation. Meanwhile, the US, Switzerland and Spain are quietly working to bring pressure to bear on Idris through other channels. The Swiss government issued an unprecedented official statement announcing their loss of confidence in Idris and calling for new leadership at WIPO.

¶21. (SBU) LOBBYING: The issue needs to be included in high-level conversations with key WIPO member states. We recommend thanking and reinforcing support from the EU, Japan, Canada, Korea, Spain, Switzerland and Nigeria, whose Ambassador as Chair resisted intense pressure and played by the rules. We need to push China, Russia, Mexico, Chile, Colombia, Brazil, Argentina, Singapore, South Africa, Kenya, Pakistan, and particularly Algeria and Egypt, who were so unhelpful.

¶22. (SBU) UNSYG: We had earlier recommended a demarche to the Secretary General. While he doesn't have statutory authority over

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the WIPO DG, he does have moral authority, and the obligation to speak out when the conduct of the head of a UN agency tarnishes the UN as a whole. We strongly recommend raising this issue with Ban Ki-moon.

¶23. (SBU) INDUSTRY CONTACTS: We have been pushing for help from industry, which has been reluctant to speak out; we could use the Department's (and USPTO's) help in convincing them to act with an open letter to Idris. (A coalition from the US, Japan and Europe recently wrote to Idris urging patent fee reductions; they ought to do the same for good governance.)

¶24. (SBU) CONGRESSIONAL BRIEFINGS: Mission Geneva strongly recommends briefing key Congressional committees, and urging expeditious Senate concurrence to the amendment to the WIPO convention limiting the Director General to two terms. We must close the door to a possible third term for Idris.

¶25. (SBU) VOTING AT WIPO: Mission Geneva also urges immediate steps to ensure that the US does not fall so far in arrears in its unitary contributions to WIPO that we lose the right to vote.

¶26. (SBU) HOLDING TOGETHER OUR COALITION: As we proceed, it is important to remember that while the US has important equities at stake in WIPO, and enormous influence, we are not in a position to remove Idris without the help of a broad coalition of countries. We have emerged from this contentious meeting with a better-than-hoped-for outcome, and a strong minority on which to build. But for the moment we have only the power to block (if like-minded countries support us) and not/not to carry motions should voting be required. That said, if we can carry forward the momentum generated at last week's meeting, we will improve WIPO and tangibly advance our UN reform agenda.

¶27. This cable was cleared by both Heads of Delegation.

TICHENOR